Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

MUSLIM D. SHAHID

Petitioner,

v.

INTERNAL REVENUE SERVICE
AND
THE UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TOTHE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petition for Writ of Certiorari

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39 pp

QUESTIONS PRESENTED

Regardless of whether the petitioner's claims may or may not have merit does not 26 U.S.C. 7422 and 28 U.S.C. 2410 give a taxpayer the right to question by suit the erroneous collection of taxes by the Internal Revenue Service and the United States of America federal government?

In 1939, did the *O'Malley v. Woodrough* decision overrule the holding that the Compensation Clause found in *Evans v. Gore* protected the judges of the Constitutional Courts (Article III, Section 1) compensation for service from income taxation?

Were the holdings reached at in *O'Malley vs. Woodrough* to effect the justices of the Supreme Court of United States and the judges of the district courts which are established by grant of Article III Section 1 of the Constitution?

Since the question was never raised during *Glidden* is it not correct that the holdings derived at in *Glidden Co. v. Zdanok* in effect overruled the decision found in *O'Malley vs. Woodrough* inasmuch as the *O'Malley* decision relates to judges of the Court of Claims and Court of Appeals?

Is it not correct that the decision reached in the *Graves v. New York Ex. Rel. O'Keffe* was to only prohibit an individual from claiming an "implied constitutional immunity" but the decision is not to be understood as to have abrogated the Compensation Clause found in Article III Section 1 of the U.S. Constitution?

If the holdings of *Glidden Co. v. Zdanok* and *Evans v. Gore* have not been overruled then is a state judge's

(acting in the capacity of an instrumentality of a state) salary subject to taxation by the federal government in lieu of *Commissioner v. Stilwell*, *Davis v. Mich. Dept. of Treasury*, and *4 U.S.C. 111*?

Do Article III judges, the president of the United States, and state judges have a constitutional immunity from Social security taxation as described by 3101(a) and 3101(b) of the federal tax codes on their compensation for service based on *Evans v. Gore*, *Hatter v. U.S.*, *Article III Section I*, *Article IV Section 4*, *U.S.C.A. 10* and *4 U.S.C. 111*?

Is there any constitutional provisions why this petitioner can not claim that sections 61(a), 62(a), 63(a), 3401, 3402(a), 3402(1), 3402(2), 3101(a), and 3101(b) of Title 26 of the Internal Revenue Code discriminates against him because the codes violates Article III Section 1, Article IV Section 2, Article X, and Article IV Section 4, in lieu of *Lunding et ux. V. New York Tax Appeals Tribunal et al.*, *Supreme Court of New Hampshire v. Piper*, *Doe v. Bolton*, *Commissioner v. Stilwell*, *Arford v. US*, and *4 U.S.C. 111* simply because federal income taxes are being questioned?

Even if Internal Revenue Codes Sections 61(a), 62(a), 63(a), 3401, 3402(a), 3402(1)(2), do not expressively exempt the President of the US, Article III judges, and state judges of the fifty republic states from taxation on their salaries, will not a claim that U.S.C.A. 10 and Article IV Section 2 in lieu of *Harper v. Virginia Dept. Of Treasury* and *Barker et al v. Kansas et al* grant the Petitioner constitutional immunity to avoid the imposition of the income tax on his salary if this Court has concluded that the US President, state judges, and Article III judges salaries can not be reduced by an direct tax on their salaries?

Since IRS Sections 3121(C), 3121(b)(D-iii) and 3121(b)(E) expressively exempts the vice-president and Article 1 judges, all who do not have expressively the protection of the Compensation Clause will not 3121(C), 3121(b)(D-iii), and 3121(b)(E) result in the Social security tax discriminating against Petitioner in light of *Sims v. US*, *Article IV Section 2*, *Article I Section 9, Clause 8*, *Article X*, and *4 U.S.C. 111*?

If Article III judges, state judges, and the president of the U.S. volunteer to pay the federal income tax on their salaries does this action obligate this Petitioner to pay the tax as well though he claims a constitutional immunity like that granted to Article III judges and state judges by the Constitution from the tax by virtue of the Equal Privileges and Immunities Clause and the Constitutional Immunity Doctrine?

Does not the Rule of Necessity in lieu of *United States v. Will* demand that this Court hear and adjudicate Petitioner's constitutional claims if there exist no Supreme Court precedent on Petitioner's actions at suit?

Did the enactment of 4 U.S.C. 111 by Congress in 1939 modify or abrogate Article III Section 1 and Article II Section 1 Clause 7 of the US Constitution?

DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Petitioner Muslim D. Shahid makes the following disclosures pursuant to this Court's Rule 29.6:

1. Secretary of the Internal Revenue Service of the United States of America.

2. United States of America Federal Government

3. Attorneys for the United States of America

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Petitioner Muslim D. Shahid, hereby petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit which reaffirmed the dismissal granted to Respondents by the United States District court for the Southern District of Texas.

OPINIONS BELOW

In its Memorandum and Order dated June 15, 1999, the United States District Court for the Southern District of Texas dismissed Petitioner's suit with prejudice.

JURISDICTION

The decision of the United States Court of Appeals for the Fifth Circuit sought to be reviewed by this petitioner and was entered on September 9, 1999. The Fifth Circuit entered its order granting Respondents summary affirmance of the District Court order on January 25, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

"Congress shall have the power to lay and collect taxes, duties, imports and excises but all duties, imports and excises shall be uniform throughout the United States."

Article I Section 8 Clause 1

"No Title of Nobility shall be granted by the United States."

Article I Section 9 Clause 8

"The President shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected…"

Article II Section 1 Clause 7

"The judges, both of the Supreme Court and the Inferior Courts, shall hold their offices during good behavior and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

Article III Section 1

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Article IV Section 2

"The United States shall guarantee to every state in this union a republican form of government,…"

Article IV Section 4

"…Congress shall propose amendments to this Constitution,…which, in either case, shall be valid to all intents and purposes,… when ratified by the legislatures of three fourths of the several states,…"

Article V

"The Constitution is the Supreme Law of the land and the judges in every state shall be bound thereby."

Article VI Clause 2

"The powers not delegated to the United States are reserved to the states respectively, or to the people."

Article X

STATEMENT OF CASE

This is not an action contesting the constitutional validity of a federal income tax. Petitioner asserts that this action in this Court is one of discrimination and constitutional deprivation. Internal Revenue Service codes 61(a), 62(a), 63(a), 3401, 3402, 3101(a), and 3101(b), as described in Title 26 of the Internal Revenue Code violate Petitioner's constitutional rights under 28 U.S.C. 1331, 28 U.S.C. 1343(1), and 28 U.S.C. § 1343(3)(4).

The Petitioner Muslim D. Shahid sought action against the Secretary of the Internal Revenue Service-Department of Treasury and the United States of America for refund of $5,917.00 as income tax and $3,794.40 as Social security tax exacted from his compensation for the tax period January 1, 1995 to December 31, 1995. Petitioner sought action by filing suit in district court under 28 U.S.C. 2410, 26 U.S.C. 7422(***see Nicholas v. U.S***, 7 WALL. 130, 491, 86 S.Ct. 1602.***; Cheatham v. IRS***, 92 U.S. 85; ***Cheek v. U.S.***, 111 S.Ct. 613), 28 U.S.C 1340, 28 U.S.C. 1331, Article IV Section 2, and Article X of the U.S.

Petitioner alleges that taxes on his compensation for service to satisfy income tax and Social security tax demands by the United States of America government are in fact taxes that discriminate because Article III Section 1 and Article II Section 1, clause 7 of the U.S. Constitution grants Article III judges, state judges and the President of the U.S. immunity from any diminution on their salaries. However, Petitioner argues that Article I Section 9, Clause 8, Article IV Section 2, Article X, and 4 U.S.C. 111 will allow him to claim this same immunity from these taxes as Article III judges, state judges, and the president of the U.S. Thus, the codes mentioned herein conflict with Article III Section 1, Article II Section 1, Clause 7, Article 1, Section 9, Clause 8, Article IV Section 2, Article IV Section 4, Article X, U.S.C.A. 16th, and U.S.C.A. 27th.

A. District Court Refuses to Adjudicate Petitioner's Claims

On May 21, 1999 the Respondent(s) filed a motion in court to have Petitioner's suit dismissed. On June 10, 1999 Petitioner filed a motion to asking the court to disregard Respondent(s) motion to dismiss Petitioner case. On June 15, 1999 Judge Sim Lake granted the Respondent(s) their motion to dismiss and further refused to allow Petitioner and opportunity to file an amended claim.

A. 5th Circuit Sidesteps Petitioner's Constitutional Claims

On 12/21/99 the Respondent's for a motion for summary affirmance. On 1/25/99 the Fifth Circuit Court of Appeals granted summary affirmance to Respondent's.

REASONS FOR GRANTING THE PETITION

I. INTRODUCTION

Petitioner contends that a United States Court of Appeals has decided important questions of tax law that have never been heard before this Court or any lower court. The District court for the Southern District of Texas refused to adjudicate Petitioner's constitutional claims by dismissing said suit. The Fifth Circuit Court of Appeals conveniently sidestepped Petitioner's constitutional issues and merely re-affirmed the district court's decision.

Petitioner raises the argument that the statutory tax codes 61(a), 62(a), 63(a), 3401, 3402, 3101(a) and 3101(b) of Title 26 of the Internal Revenue Codes violate the Compensation Clauses for the US President and Article III judges, as well as Article X, and the Equal Privileges and Immunities Clause (Article IV Section 2) of the US Constitution. Petitioner argues that the mentioned taxing statutes also conflict with 4 U.S.C. 111.

I. RESPONDENT'S CLAIMS AND ADMISSIONS

The Respondent(s) have used ***Commissioner v. Glenshaw Co.***, 348 U.S. 426 and IRC. 61(a) as a basis to show that Petitioner is subject to income taxation on his compensation for service. The Respondent(s) have publicly admitted that from ***U.S. v. Hatter***, 64F.3d 647(Fed. Cir. 1995), it was held that the Compensation Clause protects the Article III judges salaries from Social security taxes. However, Respondent(s) deny that the Compensation Clause protects Article III judges salaries from income taxation citing the case ***of O'Malley v. Woodrough***, 307 U.S. 277 (1939). The Respondents furthermore have argued that the Petitioner does not have the constitutional right to claim the Equal Privileges and Immunities Protection when federal income taxes are at issue.

II. RULE OF NECESSITY OBLIGATES THIS COURT

The ***Rule of Necessity*** demands that the federal courts adjudicate Petitioner's constitutional claims and questions, ***U.S. v. Will***, 449 U.S. 213, 214, 215 (1980); ***Jefferson County v. Acker***, (11th Cir. No. 94-6400) 1996. Yet, the lower federal courts refused to entertain Petitioner's constitutional claims in spite of the Supremacy Law that compels them to do so.

Petitioner now appeals to the integrity of the Supreme Court and requests the court to partake in the "Doctrine of STARE DECISIS-PROTECTION OF GENERATED EXPECTATIONS" and reexamine the *O'Malley v. Woodrough* decision in light of what this Court has decided since the *O'Malley* case.

This Court well knows that because of what the Court arrived at in ***U.S. v. Ex parte Baklite corp***., 279 U.S. 439(1929) and ***Williams v. U.S***., 259 U.S. 553; S. Ct. 751, the U.S. government was able to have ***Miles v. Graham***, U.S. 501, 45; S. Ct. 601, 69 (1925) overruled. Yet, the standard case of immunity for Article III judges, ***Evans v. Gore***, 253 U.S. 245, withstood the test of constitutional scrutiny during the *O'Malley* case. This Court knows very well that *Evans v. Gore* has never been overruled. Examination of the *O'Malley* case will reveal that Judge Woodrough's claims failed because he was not a judge of an Article III court.

Since the *O'Malley* decision the Supreme Court has made consequential decisions that serve as a basis for Article III jurisdiction for today's federal judiciary. From ***Glidden v. Zdanok***, 370 U.S. 591 (1962) it was held that

those courts excluded from the judicial power granted by Article III of the Constitution based on *Williams and Ex parte Baklite* should never have been done so. The *Glidden* court refuted much of the holdings given in *Williams* and *Baklite*. In 1953 § 1, 72 Stat. 848 and in 1958 § 1, 67State. 226 both congressional enactment's' have proclaimed that those courts earlier not recognized as Article III courts should be now so recognized.

Petitioner argues that *Glidden* taken in light of *Evans* will show that the *O'Malley* decision has been overruled. The courts discussed in *Miles* and *Williams* have been reestablished as Article III courts. Consequently, Respondent(s) can not rely on *Hatter* and *O'Malley* as a defense against Petitioner's constitutional complaints.

Since the Compensation Clause will prohibit the states from taxing the compensations of Article III judges, then 4 U.S.C. III and Article X will prevent the federal government from taxing those judges of the republican states whose activities are so closely linked to the function of state government that the character of the two entities can not be distinguished, ***Commissioner v. Stilwell***, 101 F. 2nd 588; 59.5 S.Ct. 794.

Petitioner argues that because of Article III and state judges immunity Article IV Section 2 and Article X will give him the right to claim constitutional immunity doctrine from the income tax and Social security tax. Petitioner asserts that although the income tax has been in effect for almost ninety years that this does not make the practice correct. From the case of ***United States v. Woodley***, 726 F.2d 1338 (1983) the court held, "*Historical acceptance and governmental efficiency are not unimportant. They will not, however, 'save [a practice] if it is contrary to the Constitution.*"

Petitioner argues that this Court can only settle the constitutional validity of these claims and questions.

III. CONSTITUTIONAL ARUGMENT

A. The Constitutional Immunity of A U.S. Citizen From the Social Security Tax on Compensation for Service

Petitioner is challenging the constitutional validity of Internal Revenue Service (IRS) Code (I.R.C.) Sections 3401, 3402(a)(1)(2), 3101(a), 3101(b), 3121(b)(D-iii), and 3121(b)(E) to the extent these statutes are used to impose social security taxes on his compensation for service. Petitioner has cited ***U.S. v Hatter*, 64F.3d 647(Fed. Cir. 1995)** in part as evidence of law that his compensation for service is protected from withholdings from Social security taxes by virtue of Article IV Section 2. In *Hatter* it was decided that that the Compensation Clause, Article III Section 1 of the U.S. Constitution protects Article III judges from diminishment. Respondent(s) contend that the *Hatter* decision is only to be understood to protect the compensations for service of Article III judges. The Respondent(s) further contend that the Petitioner's wages are not protected by the Constitution, and thus are subject to Social security taxes.

Petitioner has challenged Respondent(s) position that his wages is not protected by the U.S. Constitution. The mere fact that the Constitution does not openly express word for word that Petitioner's compensation for service is protected from diminishment by Social security taxes does not mean that such immunity does not exist. Furthermore, Petitioner's position is not to be understood that such immunity is to be implied. Petitioner asserts that this immunity is contained in the United States Constitution.

Petitioner's insists that his case is one of "res nova". That such a case like this has never been previously brought before the judicial system for review.

Article IV Section 2 of the U.S. Constitution reads, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." **Article I Section 9 Clause 8** of the U.S. Constitution read, "No Title of Nobility shall be granted by the United States." Petitioner puts forth the argument that Article III judges are all citizens of some state of the several states of the United States of America. Since Article III judges are citizens of some state then by virtue of Article IV Section 2 and Article 1 Section 9 Clause 8 of the U.S. Constitution Petitioner contends he has the constitutional right to protection from Social security taxes on his salary. The Supreme Court has ruled that the fifty states are to be viewed as one union (***Toomer v. Witsell*, 334 U.S. 385 (1948).** From ***Austin v. New Hampshire*, 420 U.S. 656(1975)** the Supreme Court held, "*The Privileges and Immunities Clause, by making non-citizenship or non-residence an improper basis for locating a special burden, implicates not only the individual's right to nondiscriminatory treatment but also, perhaps more so, the structural balance essential to the concept of federalism.*" Other Supreme Court decisions have upheld this equality of treatment among U.S. citizens. In the case of the ***Supreme Court Of New Hampshire v. Piper*, 470 U.S. 280 (1985)** the High Court stated... "*we have held that it is "[o]nly with respect to those 'privileges' and 'immunities' bearing on the vitality of the Nation as a single entity" that a State must accord residents and nonresidents equal treatment.*" The Internal Revenue Service and the United States of America federal government's refusal to recognize Plaintiff's right to claim the Privilege and Immunity Clause has resulted in the federal government of the U.S. elevating

the president of the U.S. and Article III judges to a Title of Nobility, a thing contrary to Article I Section 9 Clause 8.

Respondent(s) state that Petitioner's position on the Privileges and Immunities Clause is "wholly off the mark." Respondent(s) have stated that the Privileges and Immunities Clause was designed solely for the purpose of insuring that a citizen of State A who ventures into State B will have the same privileges of citizen B. The Respondent(s) furthermore state that, "Plaintiffs claim involves the Internal Revenue Code and not the privileges and immunities of citizens of different states". The Respondent(s) assert that the clause is only limited to privileges and immunity issues of citizens of different states. The Respondent(s) imply that the Privileges and Immunity Clause can not be applied to the Internal Revenue Code, a statutory enactment of the U.S. Congress. However, the Supreme Court has held that such a narrow interpretation of the clause is not binding, ***Doe v. Bolton*, 410 U.S. 179 (1973),** "*The Court has never held that the Privileges and Immunities Clause protects only economic interests*". The Supreme Court recently applied the Privileges and Immunity Clause to the New York State Tax Codes. "*In the absence of a substantial reason for difference in treatment of New York nonresidents, Sec. 6319(b)(6) violates the Privileges and Immunities Clause...*", ***Lunding et ux. V. New York Tax Appeals Tribunal et al.*, No-96-1462. (1998)**. Petitioner also argues that there exist no clauses in the Federal Constitution that prevents him from claiming the Privilege and Immunity Clause when federal taxes are at issue. **Article X** of the U.S. Constitution says, "The powers not delegated to the United States are reserved to the states respectively, or to the people." Thus, Article X, the *Doe*, *Austin*, *New Hampshire*, and *Toomer* decisions support the Petitioner's right to claim the Privilege and Immunities Clause.

Furthermore, Title 4 U.S.C. § 111"**(Public Salary Tax Act of 1939, U.S. Senate Committee on Finance, Tuesday, February 21)** will further exempt all judges of state courts from Social security taxes on their salaries because of the "Doctrine of Intergovernmental Immunity, ***McCulloh v. State of Maryland*, 4 Wheat. 448**. If Social security taxes can not be levied by the federal government on judges of the federal courts then no such tax can legally be sustained on judges of the state courts of the fifty republican states. Petitioner asserts that state judges of the fifty republic states are citizens of their individual states that they reside in. Consequently, Article IV Section 2 would entitle the Petitioner to the same privileges and immunities of the state judges. Yet the Petitioner must comply with Section 3101(a) and 3101(b) or be threaten with possible civil penalties by the IRS-Department of treasury.

The Social security tax under question was levied directly on Plaintiff's salary. Since Social security taxes are not collected by the rule of apportionment it must be concluded that the tax under question must be either an excise tax or an indirect tax, see ***Stanton v. Baltic Mining Co.*, 240 U.S. 103; *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 60 L.Ed. 493, L.R.A. 1917D, 414, 36 Sup. Ct. Rep. 236.** Thus, the Social security tax must be applied according to the Rule of Uniformity, ***U.S.C. Art. 1, Sec. 8, Cl. 1***. The Rule of Uniformity requires that an indirect tax not discriminate geographically, ***U.S. v. Ptasynski*, 462 U.S. 74 (1983).** Petitioner insists that the provisions of Sec. 3101(a) and 3101(b) of the I.R.C. that require withholdings from his compensation for service for Social security tax purposes discriminate because Sections 3121(b)(D-iii) and 3121(b)(E) of the I.R.C. clearly exempts the vice-president, U.S. Tax Court judges, U.S. Bankruptcy judges, and U.S. magistrate judges from mandatory

compliance to the tax. Nothing in the Federal Constitution implies that the vice-president of the U.S. compensation for service is protected from diminishment while he holds his office. Furthermore, the judges of the U.S. Tax Courts and Bankruptcy Courts are not even judges of an Article III court. These are judges of Article I courts whose compensations are not protected by Article III Section 1 of the Constitution, ***Northern Pipe Line Construction Co. v. Marathon Pipe Line Company and United States*, 458 U.S. 50, 73 L.Ed 2d 598, 102 S.Ct. 2858**. The Supreme Court has concluded that only those judges of Article III courts are entitled to the protection of the Compensation Clause in Article III, Section 1, ***Williams v. U.S.* 259 U.S. 553, 53 S.Ct. 740; *O'Donohuge v. U.S.*, 289 U.S. 289 516, 53, S.Ct. 740**

The Respondent(s) position that Petitioner's wages are not protected by the Constitution is not sufficient to uphold a discriminatory tax scheme. "*If a tax by one government upon the instrumentality's of the other is actually discriminatory, that very fact alone makes it unconstitutional. And that is so whether or not the tax would otherwise be upheld*", ***The Constitutional Immunity of State And Municipal Securities*, The Attorneys General of the States (1939); *Pacific Co. v. Johnson*, 285 U.S. 480, 493 (1932); *Schuykill Trust Co. v. Pennsylvania*, 296 U.S. 113 (1935).**

In writing the Social security tax codes Congress, contrary to U.S.C. Article I Section 8, Cl. 1, Article I Section 9 Clause 8, and U.S.C.A. 16, made statutory adjustments for the vice-president, Article I judges, Bankruptcy judges, Tax court judges, and U.S. magistrate judges by exempting them from being classified as "persons employed" [Section 3121(b)(D-iii)]. This statute allows the vice-president, and non- Article III judges the right to avoid

the imposition of Social security taxes on their salaries. While Sections 3101(a) and 3101(b) of the IRS codes classifies the Plaintiff as a "person" who is employed and subject to Social security taxes. Concerning the question of tax exemptions the Supreme Court has ruled, "*a tax exemption...would not discriminate on the basis of the source of those benefits...rather, it would discriminate on the basis of the amounts of benefits...*", ***Davis v. Mich. Dept. of Treasury*, 109 Sup. Ct. Rep., 1507 (1989)**. The Supreme Court has further ruled, "*A state may not single out those who deal with the United States, in one capacity or another for a tax burden not imposed on others similarly situated*", ***Phillips Chemical Co. v. Dumas Independent School District*, 361 U.S. 376; 4 L.Ed. 2nd 384; 80 S. Ct. 474.** Clearly, the vice-president, Article I judges, Bankruptcy judges, U.S. magistrate judges, Tax court judges, and the Petitioner all receive a salary from an employer, and realize certain benefits from their employers. They therefore are similarly situated. "*Nothing in the Federal Constitution suggest that the salaries of federal employees are to be treated any different than the salaries of non federal employees*", ***Sims v. United States*, 359 U.S. 108, 110, 79 S. Ct. 641, 644, 3 L.Ed.2d. 667 (1995).** The Ninth Circuit Court of Appeals ruled that the court did not believe that Congress intended that special treatment should be granted to individuals merely because they worked for a branch of the government rather than a private company, ***Arford v. U.S.* 934 F.2d 234 (9th Cir. 1991)**. From ***Barker et al v. Kansas et al*, No. 91-611, April 21, 1992**, it was held that there were no "significant differences" between military retirees and state and local government retiree's benefits. Consequently, the Kansas tax on military retirees benefits was held in violation of Title 4 U.S.C. § 111and thus, invalid.

Based on ***Arford, Barker,*** and ***Sims***, Petitioner's contends that the source of income would be an improper basis for locating a special burden on the individual for the collection of Social security taxes. Yet Section 3121 and its subsections does nothing but make the Social security tax a tax that takes the source of capital under consideration, a consideration not allowable when a sovereign government is to implement a indirect tax on income, ***U.S.C.A. 16***.

On the basis of this arguments IRS code Sections 3101(a), 3101(b), 3121(b)(D-iii) and 3121(b)(E) which creates a tax liability for Social security taxes on Petitioner's compensation for service for Social security conflict with U.S.C. Article I Section 8, Cl. 1, and U.S.C.A. 16 because the tax is one that is predicated on the source of the economic benefit not the amount of the benefit. Employees of the federal government such as vice-president of the U.S., Article I judges, U.S. magistrate judges, Tax court judges, and Bankruptcy judges do not have a constitutional immunity from their compensation being diminished. The fact that these subsections of I.R.C. 3121 exempts these individuals from paying Social security taxes on their compensation is lawful evidence that Petitioner is being discriminated against by the Internal Revenue Service taxing statutes.

Petitioner alleges because of these lawful facts that have been presented herein the United States of America Government and the Internal Revenue Service-Department of Treasury are forcing Petitioner to comply with a Social security tax that he has the constitutional right to avoid. This is because (1) the tax violates the Equal Privileges and Immunity Clause; (2) the tax collection procedure is not in accord with the rule of uniformity; (3) the current Social security tax code, 1321 discriminates against the Plaintiff; and (4), the IRS statutes mentioned herein as they are

currently codified in the Internal Revenue Code in Title 26 will always results in discrimination taxation to the Petitioner under the U.S. Constitution due to Article II Section 1 Cl. 7, Article I Section 9 Cl. 8, Article III Section 1, Article IV Section 4, U.S.C.A. X, Article IV Section 2, and U.S.C.A. 16.

A. The Constitutional Immunity of A U.S. Citizen From the Federal Income Tax on Compensation for Service

Petitioner asserts that this action in court for his claim of constitutional immunity from the federal income tax on his compensation for service is "sui generis". Internal Revenue Service provisions 61(a), 62(a), 63(a), 3402, 3401, as describe in Title 26 violate Petitioner's constitutional because the statutory enactment's disregards and fails to recognize the constitutional privileges and immunities of U.S. citizens and thus, conflict with Article III Section 1, Article II Section 1, clause 7, Article 1 Section 9, clause 8, Article IV Section 2, Article IV Section 4, Article X, U.S.C.A. 16th, and U.S.C.A. 27th.

The Respondent(s) have used ***Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426** and **Section 61(a)** of the Internal Revenue Codes to show that Petitioner is a taxpayer subject to the payment of income taxes. Consequently, Respondent(s) position is that the Petitioner has failed to state a claim where relief may be granted. However, the Petitioner is not contesting Congress's power to promulgate tax statutes that would encompass an U.S. citizen's compensation for service as is described in Section 61(a). Nor is the Petitioner challenging whether Congress has the right to enact tax legislation for the purpose of collecting revenue. The fundamental issue being raised here by Petitioner is, when considering federal income taxes are

some U.S. citizens entitled to special privileges and immunities while other U.S. citizens similar situated are not? If the Supreme Court has decided that certain U.S. citizens who hold a special federal office have the right to avoid the tax, then would such a tax discriminate against the Petitioner? In the instant case Petitioner is asserting that a tax on his compensation for service to satisfy income tax demands by the United States of America is in fact a discriminatory tax because the High Court has held and still holds today that the U.S. Constitution grants Article III judges, the president of the U.S., and state judges of the republic states of the Union a immunity from any taxation on their compensations. The possibility that Article III judges, the president of the U.S., and state judges may or may not be exercising this constitutional grant of immunity does not fail Plaintiff claim(s). The Petitioner Muslim Shahid insists that Article I Sec. 9, clause 8, Article IV clause 2, and Article X in the U.S. Constitution will grant him this same immunity from taxation on his compensation as well. Petitioner cites ***Evans v. Gore*, 253 U.S.245, *O' Donohuge v. United States; Hitz v. Same*, 289 U.S. 516; 53 S. Ct. 75; *Commissioner vs. Stilwell*, 101 F.2nd 588; 59 S. Ct. 794** as the controlling Supreme Court and Circuit Court decisions for this constitutional immunity from income tax on compensation for service

Respondent(s) cite ***O'Malley v. Woodrough*, 307 U.S. 277; 59 S. Ct. 838** as case law that supports the U.S. governments contention that Article III does not prohibit taxation of federal judges compensations for service. Petitioner asserts that past U.S. Supreme Court decisions and Congressional enactment's clearly show that the *O"Malley* decision was never directed to Article III judges of the Constitutional Courts during this time. Petitioner will show from the arguments to follow that under the current Law established by the Supreme Court that the rulings

derived at in *O'Malley* have now been narrowly restricted if not completely overruled.

From ***Evans v. Gore*, 253 U.S. 245** the Supreme Court ruled in 1920 that taxation was diminution and thus any tax provisions that are extensions of the 16th Amendment cannot be levied on the salary of a federal judge or the President of the United States. From *Evans* the court stated, . . ."*These considerations make it very plain, as we think, that the primary purpose of the prohibition against diminution was not to benefit the judges, but, like the clause in respect of tenure, to attract good and competent men to the bench, and to promote that independence of action and judgment which is essential to the maintenance to the guaranties, limitations, and pervading principles of the Constitution. . .**The prohibition is general, contains no excepting words, and appears to be directed against all diminution, whether for one purpose or another. . .for, of course, doing what the Constitution permits gives no license to do what it prohibits.*"

The U.S. Tax Court case of ***Commissioner vs. Stilwell*, 101 F.2nd 588; 59 S. Ct. 794**, ruled that a Master-in-Chancery of Superior Court of Cook County, Illinois was not subjected to federal taxation. The Seventh Circuit Court of Appeals concluded this function is an integral part of the judicial system. In ***Helvering v. Gerhardt*, 304 U.S. 405** the immunity from taxation on a state officer or employee was narrowly restricted to what was held in ***Collector v. Day*, 11 Wall 113, 127(1870)**. It was concluded in *Helvering* that the state immunity in the *Day* case could only apply to a state judicial officer engaged in the performance of state duties. It was held that in the *Day* ruling the high court based its decision on the 10th Article of the Constitution, "**The powers not delegated to the United States are reserved to**

the states respectively, or to the people." (Emphasis added)

The *Day*, the Court held, "The Constitution guarantees to the states a republican form of government . . . Such being the separate and independent condition of the states in our complex system, recognized by the Constitution, and . . . should be left free and unimpaired; should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges . . .And, more especially, those means and instrumentality's which are creation of their sovereign and reserved rights, one of which are the establishments of the judicial department, and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the states, under the form of government guaranteed by the Constitution could long preserve its existence.

In ***Saxe v. Shea*, 98 F.2nd 83(38-2USTC¶n9412** the court held that as in the *Day* case the salary of a state officer, a probate judge was deemed immune from the federal income tax and this principal is still accepted as the law. The court went on to further say that the Supreme Court has now refused to enlarge the immunity beyond these limits. In ***Graves v. New York Ex. Rel. O'Keefe* 306 U.S. 466, 486-487; 59 S. Ct. 595, 601-602,** the Court used the definition of an officer of a state government held in *Helvering v. Gerhardt* as a reason to deny immunity in *O'Keefe*. The *Helvering* court recognized a state judge as an officer of the state. The *O'Keefe* court decided that there can be no implied constitutional immunity claims to protect salaries from taxation. However, the court held that interference with the operation of one government's instrumentality by another governs the test for immunity from taxation. From *Stilwell,* the court held that, "*But in*

those cases where the activity or the agencies adopted to carry it out being of a strictly governmental character, the immunity is still absolute." This holding in *Stilwell* is the same that was reaffirmed by the Supreme Court in the *O'Keefe* matter.

The *Stilwell* court also pointed out that the *Helvering v. Gerhardt,* and *Saxe v. Shea* cases had essentially narrowed the doctrine of reciprocal immunity. An application for a certiorari to review the *Stilwell* decision by the federal government was dismissed by the Supreme Court on April 24, 1939. From ***Commissioner v. Stilwell***, the court concluded that the prohibition on taxation of a judge's salary while in office (found in the language of Article III, Sec. 1), extended even to state judges with the ruling established in *Evans v. Gore* as controlling. "*The Judges, both of the Supreme and inferior Courts, . . . a Compensation, which will not be diminished during their continuance in office.*" The court in *Stilwell* concluded by ruling . . . "***if immunity exists as a Constitutional matter, as WE THINK IT DOES, no regulation could alter the rights of the respondent.***" (Emphasis added). Plaintiff contends that no Circuit Court of Appeals or Supreme Court decision can be found that has overruled *Stilwell.* On the matter of what controls the test for constitutional immunity from taxation, the *O'Keefe* court emphatically stated: "***The ultimate touchstone of the constitutionality of a matter is the Constitution, and not what courts or Congress have said about it.***" (Emphasis added)

In the Board of Tax Appeals case ***Cochrane v. Commissioner*** **Vol.26, Board of Tax Appeals, 1167(CCH Dec. 7762),** it was also decided that the compensation of a Master-in-Chancery of the Superior Court of Cook County, Illinois to be immune from the federal income tax. Again,

the courts have reaffirmed the constitutional immunity of state judges' compensation from federal taxation.

The constitutional immunity granted to Article III judges, state judges, and the United States President does not have its genesis in constructive legislation on the federal or state level. Its roots are in the U.S. Constitution. Consequently, a mere legislative act of Congress is not sufficient to overturn a Constitutional clause. According to the United States Constitution, **Congress can only modify the Constitution by proposed amendments, and their subsequent ratification by the States**. U.S.C. V. The Supreme Court ruled in 1920 **that, "Congress . . . cannot by legislation alter the Constitution . . ." *Eisner v. Macomber*, 252 U.S. 189(1920)** (Emphasis added)

From ***Taylor v. Porter & Ford*** , **139 N.Y. 774,775** "Under our form of government the legislature is not supreme. It is only one of the organs of that absolute sovereignty which resides in the whole body of people. Like other departments of the government, it can only exercise such powers as have been delegated to it . . . .", **189 N.Y. 774**. In ***Miranda v. Arizona*, 384 U.S. 436, 491, 86 S. Ct. 1602**, the courts have ruled "*Where rights are secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.*" Petitioner summary of judicial review effecting Article III judges salaries clearly shows that *any legislation* that attempts to levy a tax on the salary of federal and state judges or the President of the United States is not Law. Until Congress proposes an amendment to the Constitution with its subsequent ratification which will repeal Art. III. Sec. 1 and Art. II. Sec. 1, Cl. 7, Article III judges and state judges salaries are protected. Thus, if federal and state judges as well as the President are paying income taxes on their compensations they are either doing so voluntarily or

out of ignorance. However, such voluntary payments for income taxes will not fail Petitioner's claim for the Equal Privilege and Immunity Clause. "*Taxes are enforced exaction's not voluntary contributions*", ***Commissioner v. Newman***, 159 F.2d. 848, 850-51; ***Holmstrom v. PPG***, 512 F. Supp. 552, 556; ***CRS Report***, March 13, 1992, pgs. 13-14; ***IRC. 61(a).***

Respondent(s) have defended their authority to tax the compensations of the judges by citing the Supreme Court case of ***O'Malley v. Woodrough*, 307 U.S. 277; 59 S. Ct. 838**. In *O'Malley* the court ruled that when including gross income on which taxes will be paid, the "compensation of judges of courts of the United States taking office after June 6, 1932, is constitutional, since a nondiscriminatory tax laid generally on net income is not when applied to the income of a federal judge, a diminution of salary within prohibition of constitution." The Revenue Acts of 1932[**47 Stat.169,178**],1934 , and 1936 made judge Woodrough's compensation subject to an income tax.

Petitioner cites the recent U.S. 5th Circuit Court of Appeals case ***U.S. v. Hatter*** which references the *O'Malley* decision. Although federal income tax issues where not raised during this case the *Hatter* court once again established the continuing vitality of the Law which gives Article III judges immunity from any taxation on their compensation. This court decided that Social security taxes couldn't be withheld from the salaries of judges who take office before such taxes are imposed.

The *Hatter* court in reaching its decision attempted to distinguish *Evans* from *O'Malley*. The *Hatter* court commented that Supreme Court's rulings in *Evans* and *O'Malley* appear to create a judicial controversy. In ***U.S. v. Will*, 449 U.S. 200; 66 L.Ed. 2nd 392; 101 S. Ct. 47(1980),**

the court briefly commented on this judicial controversy between the divergent holdings of the two cases but declined to elaborate on the matter.

Petitioner contends that regardless of what was said in *Hatter*, the Supreme Court has never overruled *Evans*. In *Will*, the Supreme Court held that the holdings in *Evans* still stand. The *Hatter* court holdings themselves support Petitioner's arguments, *"Neither of these pronouncements, however, is sufficient to overrule Evans. . .The Supreme Court has never overruled Evans."..."Evans governs this case more directly than O'Malley."* If *Evans* has never been overruled, why then does the decision in *O'Malley* appear to be directly against Article III, Sec. 1 of the U.S. Constitution? Petitioner now request the court to partake in the "Doctrine of STARE DECISIS-PROTECTION OF GENEREATED EXPECTATIONS" and reexamine the *O'Malley* decision, ***Glidden Co. v. Zdanok*, 370 U.S. 591, 8 L. ed 2d 671, (1962).** The Supreme Court concluded *O'Malley* with the following holding *"But to the extent that what the Court now says is inconsistent with what was said in **Miles v. Graham, U.S. 501, 45 S.Ct. 601, 69 L.Ed. 1067**, the latter cannot survive."*

In *Miles v. Graham*, the federal government claimed because Judge Samuel J. Graham was appointed after the enactment of the **Revenue Act of 1918** that he was now subject to the income tax. Nevertheless, the Court ruled in favor of Judge Graham citing that the fact that he took office after the Revenue Act could have no bearing on his constitutional immunity.

The Supreme Court case of ***U.S. v. Ex parte Bakelite Corp.*, 279 US 439** of 1929 addressed the question of whether courts established by an act of Congress could hear cases that do not involve the U.S. government in

matters of controversy be considered a court created from the authority contained in article 3 § 1 of the United States Constitution. From the *Bakelite* decision the Supreme Court concluded that there are two types of federal courts. One type of court called "constitutional courts" derive their judicial powers from section 2, article 3 of the U.S. Constitution. The judges (**Article III**) of these courts' tenures is protected and their compensations' can not be diminished during office. The other type called "legislative courts" or more appropriately called non-constitutional courts do not derive their powers from article 3 and their judges' compensation is not protected while in office. The question of what judges in the Federal Judiciary were judges of Article III courts was finally brought before the Supreme Court for clarification in the cases of ***Williams v. United States*, 259 U.S. 553; 53 S. Ct. 751, *O'Donohuge v. United States*,** and ***Hitz v. United States*, 289 U.S. 516; 53 S. Ct. 740.**

Thomas S. Williams had been a judge of the Court of Claims since November 11, 1929. Up until June 30, 1932, he paid no tax on his salary. However, the Legislative Appropriations Act of June 30, 1932 and the Revenue Act of 1932, Section 22, June 6, 1932 made judge Williams salary subject to an income tax.

Before June 30, 1932, Judge Williams had an annual salary of $12,500. The federal government took the position that the Court of Claims was not a "constitutional court" created by Article III, Section 1 of the Constitution but was in fact a "legislative court" created by an act of Congress. Judge Williams filed suit claiming that the Court of Claims is a constitutional court by the power of Article III.

The *Williams* Court expound that the court of Claims sole function was to decide between the government and

private suitors. The Court of Claims was established by an act of Congress in 1855[c.122, 10 Stat. 612]. The *Williams* Court held that Congress from time to time established tribunals to hear testimony and to decide upon the validity of judgments against the United States. The court further stated that though such tribunals were later called courts, their decisions and judgments did not alter or enlarge its power. The *Williams* court also held, "*But in respect of this court different principles were said to apply, since this court is created by the Constitution. . .the power conferred on this court is exclusively judicial, and cannot be required or authorized to exercise any other.*"

The Williams court referencing the case of ***American Insurance Company et. al. V. Canter*, 1 Pet. 511, 546, 7L.Ed 242,** and quoting Chief Justice Marshall, "*The jurisdiction, with which they are invested, is not a part of the judicial power which is defined in the 3rd article of the Constitution. . .That is to say (1) that the courts of the territories (and, of course, other legislative courts) are invested with judicial power, but (2) this power is not conferred by the third article of the Constitution but by Congress in the execution of other provisions of that instrument.*"

During the *Williams* case the holdings of *Miles v. Graham* was addressed. It was said that from *Miles* the Court held that the Court of Claims is a constitutional court and not a legislative court. However, the *Williams* Court held that the *Miles* decision on the prohibition of Article III, Section 1 was taken too broadly. On *Miles* the Court stated, "*the opinion therein contains no mention of the cases that supposed to been disapprove; nor does it show that this Court's attention was drawn to the question whether that court is a statutory court or a constitutional court. In fact, as appears from the briefs, that question was not mooted.*

Such as was mooted was considered and determined in the opinion." The Supreme Court concluded that the Court of Claims and any legislative court (Article I) receives no authority from Article III, and its judges are not entitled to the judicial privileges obtain from the third article. On the same day that the *Williams* case was being decided the Supreme Court also decided both the *O'Donoghue* and *Hitz* cases. Daniel W. O'Donoghue was appointed associated justice of the Supreme Court of the District of Columbia on February 29, 1932. William Hitz was appointed associated justice of the Court of Appeals of the District of Columbia on December 5, 1930. After the Legislative Appropriations Act, the Comptroller General of the United States concluded that the Supreme Courts of the District of Columbia and the Court of Appeals of DC were not constitutional courts but were legislative courts. Thus, these judges were not entitled to the constitutional protection on federal judges salaries provided for in Article III, Section 1. Consequently, the comptroller General ordered that judge O'Donoghue's salary is reduced by 10 percent and judge Hitz salary by 20 percent. After a lengthy discussion on the history of the courts of the District of Columbia the Supreme Court held that the Court of Appeals and the Supreme Courts of the District of Columbia are constitutional courts of the United States established under Article III of the Constitution. That these judges' compensation cannot, under the Constitution, be diminished while they are in office.

Respondent(s) cite *O'Malley* Court holding that Congress has the power through legislation to make constitutional judges responsible like any other citizen to share the cost of maintaining government is misplaced. Petitioner again cites the *Evans* decision, which has never been overruled. Concerning Article III judges *Evans* addresses the citizenship issue raised in *O'Malley*, "speaking generally, his duties and obligations as a citizen are not different from

those of his neighbors. But for the common good. . .his compensation is protected from diminution in ***any form whether by a tax or otherwise***, and is assured to him in his entirety for his support." (Emphasis added) The Court made no distinction between whether a judge takes office before or after newly enacted income taxes. Once the judge takes office he has the constitutional protection of Article III, Sec. 1, and any form or procedure to tax his salary is prohibited.

The proper conclusion from the holdings in *O'Malley* is that this decision did not extend to the judges of the constitutional courts and that Section 22 of the Revenue Act of 1932 could not have included Article III judges. Proof that Section 22 of the Revenue Act of 1932 did not apply to Article III judges can be found in the **Revenue Act of 1938** and the **Public Salary Tax Act of 1939**[*Public No. 32, 76th Cong. 1st Sess., c. 59, 26 U.S.C.A. Sec. 22(a)].*

The Revenue Act of 1938(Sec. 22(a)) further amended Section 22 of the Revenue Act of 1932 to include judges who took office before the act of 1932. However, Section 209 of the Revenue Act **[26 U.S.C.A. sec. 22]** of 1938 exempted Justices of the Supreme Court and judges of the inferior courts created under Article III of the Constitution who took office prior to the act of 1932 or any other revenue act before 1938.

The Public Salary Tax Act of 1939 that Congress enacted was legislation (Section 3) that amended Section 22(a) of the Revenue Act of 1938 to subject the judges of the courts of the United States who took office on or before June 6, 1932 to the tax. To the effect that Section 3 of the Public Salary Tax Act could have on all Article III judges who took office before the Revenue Act of 1932 the Supreme Court in *O'Malley* gave the following reply, **"That Section, is not now before us."** This statement supports

Petitioner's allegation that the U.S. Supreme Court has never ruled that Congress with Section 3 of the Public Salary Tax Act or by virtue of the *O'Malley* decision could legally reach the compensations of the judges(Article III) of the constitutional courts.

When reviewing *Evans*, *Miles*, *Ex Parte Bakelite*, *Williams*, *O'Donohuge*, and *O'Malley* the factual evidence is clear that judge Woodrough's court was not considered an constitutional court [at least not in 1939]. The holdings from these court decisions shows that the *O'Malley* decision was not to be understood to include Article III judges of constitutional courts. Petitioner's final show of lawful evidence which proves that the Court's decision in *O'Malley* was directed at non Article III judges is drawn from the United States of America's final statement in its brief to the Court in the *O'Malley* matter, "*Moreover, Miles v. Graham cannot be regarded as binding authority since the taxpayer therein was a judge of the* **Court of Claims** *(Emphasis) and therefore not entitled to the protection of Article III, Section 1....In assuming his new duties Judge Woodrough entered into an entirely new office, established by different statutory provisions(Sec. 118 of Judicial Code, as amended, U.S.C., Title 28, Sec. 213),*"**[In the District Court of the United States for the District of Nebraska, Omaha Division, No. 3763-Law(1939).**

The Supreme Court case of ***Glidden Co. V. Zdanok*, 370 US 591, 8 L ed 2d 671, (1962)** revisited *Williams* and *Ex parte Bakelite* and held that those courts earlier excluded are invested with the judicial power granted by Article III of the Constitution. *The Glidden* Court refuted many of the holdings that were given in the *Ex parte Bakelite* and *Williams* Courts. The Supreme Court did not deny that federal courts can be distinguished as either constitutional or non-constitutional courts. With *Glidden*, the Court limited the affect

that *O'Malley* would have on the federal judiciary. Further, if other courts considered once as statutory courts are now considered Article III courts then the *Evans* rulings again would protect those judges held by *O'Malley* not to have the protection of the Compensation Clause. Even before the *Glidden* decision Congress in 1953 **[§1, 67 Stat.226] and** 1958 **[§1, 72 Stat.848]** proclaimed through congressional enactment's that the earlier courts not recognized as Article III courts should now be so recognized. Petitioner contends that a thorough reading of *Glidden* shows that the Supreme Court has overruled *O'Malley*. Thus, *Hatter's* reliance on *O'Malley* is in error. Consequently, Defendant(s) reliance on *Hatter* and *O'Malley* in light of *Glidden* is non-persuasive.

The Supreme Court still distinguishes between Article III courts and non-Article III courts is found in the decision of ***Northern Pipeline Construction Co. v. Marathon Pipeline Company*, 458 US 50, 102 S Ct 2858, (1982)**. The *Northern* Court concluded that the Bankruptcy courts do not have the power to exercise the judicial power granted in Article III. It was also held that Bankruptcy judges tenure and salaries are not protected by Article III, Sec.1.

Finally, Petitioner shows final and recent evidence that the Federal courts still recognize that Article III judges salaries as being protected by the Compensation Clause of the Constitution. The United States 11th Circuit Court Of Appeals found that a privilege tax impose by Alabama on federal judges holding office under Article III of the Constitution violates the Supremacy Clause of the Constitution, ***Jefferson County v. William M. Acker; U.W. Clemon*, No-94-6400. (1996)**. In *Jefferson*, the court was actually asked to address not only does the privilege tax violate the Supremacy Clause but also whether the tax unconstitutionally diminishes federal judges' compensation. However, because the court ruled that the Supremacy

Clause bared the application of the tax on the federal judges the court did not address the compensation clause issue. Plaintiff contends that the tax did violate Article III Sec. 1. The District court ruling in the matter held that applying the ordinance to Judge Acker and Clemon violates the Compensation Clause, ***Jefferson County v. Acker*, 850 F. Supp.1536, 1543(N.D.Ala. 1994)**. Although the tax under question was a privilege tax imposed by Jefferson County, Plaintiff asserts that under the Buck Act the tax is the same as an income tax, **4 U.S.C. Section 106(a)**. The District court found that the Jefferson County privilege tax fell within the Buck Act's definition of an "income tax" because gross receipts measure the privilege tax.

The 11th Circuit Court of Appeals held in *Jefferson* that, "*The Buck Act defines 'income' as any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.*" In , ***Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624; 73 S. Ct. 465, 97 L ed. 617 (1953)**, employees of a naval ordnance plant located on federal property challenged the City of Louisville's license fee for the privilege of working in the city. In giving its decision the Supreme Court held, "*We hold that the tax authorized by this ordinance was an income tax within the meaning of the Buck Act.*" Relying on *Howard* the *Jefferson* court concluded that since Jefferson County used gross receipts as a means to determine the privilege tax on Judge Acker under the Buck Act the tax was the same as an income tax. However, the *Jefferson* court *decided that "the Buck Act does not alter intergovernmental tax immunity doctrine or constitute consent to the privilege tax.*" The Jefferson court concluded that the privilege tax when applied to federal judges violates the intergovernmental tax immunity doctrine and the Supremacy Clause protects Article III judges compensation. Plaintiff contends that the holdings of *Evans*, *O'Donohuge*,

and *Glidden* also protect Article III judges compensation from a privilege tax or income tax.

Petitioner puts forth the position that because the Supremacy Clause and Compensation Clause will prohibit states from taxing the compensation of Article III judges that 4 U.S.C. 111 and 4 U.S.C. 106(a) will prohibit the federal government from legally levying a tax on the salaries of state judges of the fifty republican states. Since state judges are citizens of the states they reside in Petitioner contends he has the right to claim the Equal Privilege and Immunities Clause to protect his compensation from the income tax as well.

Petitioner argues that as an American citizen he is entitled to receive the protection of the **Constitutional Immunity Doctrine** from the federal income tax on his salary. From the case of, ***Davis v. Michigan Dept. of Treasury* 109 Sup. Ct. Rep. 1506(1989)**, the Supreme Court ruled, "It is true that intergovernmental tax immunity is based on the need to protect each sovereigns governmental operations from undue interference by the other. *BUT IT DOES NOT FOLLOW THAT PRIVATE ENTITIES OR INDIVIDUALS WHO ARE SUBJECTED TO DISCRIMINATORY TAXATION ON ACCOUNT OF THEIR DEALINGS WITH A SOVEREIGN CANNOT THEMSELVES RECEIVE THE PROTECTION OF THE CONSTITUTIONAL DOCTRINE.*" (See also ***Harper v. Virginia Dept. Of Taxation*, 1135, S. Ct. 251 (1993); *Iowa-Des Moines Nat. Bank v. Bennett*, 284 U.S. 239-247**. As in the *Phillips* case the Supreme Court ruled that the tax discriminated unconstitutionally, and thus, the tax could not be exacted.

The IRS and the United States of America have put forth the view that the *O'Malley* decision and the long and

continuous practice of the tax(*Commissioner v. Glenshaw Glass Co.*) on U.S. citizens compensations for service gives the presumption of the constitutionality of the current form of the tax. Furthermore, the IRS and the U.S. federal government appear to presume that because the statute IRC. 61 have been codified that it is no longer open for further discussion. However, "*It is a well established principle that if selection of one of alternative constructions of a statute would involve serious constitutional difficulties, that is reason to reject that construction in favor of another*", ***U.S. v. Mobile Corp*, Civil Action No. CA-3-80-0438-G(81).** Recent Supreme Court decisions have agreed that no matter how accepted or efficient a practice has been it is "*subject to the demands of the Constitution which defines powers and... sets out just how those powers are to be exercised.*" ***INS v. Chada*, 103 S.Ct. 2764, 2781, 77 L.Ed.2d 317 (1983).** "*The teachings of Chada is clear. Historical acceptance and governmental efficiency are not unimportant. They will not, however, "save [a practice] if it is contrary to the Constitution*", ***United States v. Woodley*, 726 F.2d 1338(1983).**

CONCLUSIONS

Because of the constitutional limitations on taxation expresses herein this document Muslim D. Shahid respectfully requests the Court to grant this petition.

Respectfully submitted,
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Houston, Texas 77064
281-807-1954
832-567-5021
Petitioner Pro Se

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MUSLIM D. SHAHID Civil Action No. H-99-03-0392
(a.k.a. DWIGHT K. REID)
PLAINTIFF

v.

THE SECRETARY OF THE INTERNAL REVENUE
SERVICE OF THE UNITED STATES OF AMERICA
DEFENDANT

ORDER

Pending before the court is the United States' Motion to Dismiss (Docket Entry No. 9) to which the plaintiff, Muslim D. Shahid (a/k/a Dwight K. Reid), pro se, has responded (Docket Entry No. 10). For the reasons stated in the United States' motion the court concludes that plaintiff has failed to state a claim for relief. Accordingly, the United States' motion to dismiss is **GRANTED**. Because plaintiff's Complaint and his "Motion to Deny Defendant's Motion to Dismiss" reflect that even if plaintiff were allowed to amend his complaint he could not state a claim for relief, the court will dismiss this action instead of allowing plaintiff the opportunity to file an amended complaint.

SIGNED at Houston, Texas, on this 14th day of June, 1999.

SIM LAKE

JUDGE SIM LAKE
UNITED
STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 99-20782

MUSLIM D. SHAHID

PLAINTIFF -Appellant

v.

INTERNAL REVENUE SERVICE; THE UNITED STATES OF AMERICA

DEFENDANT -Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON

BEFORE SMITH, BARKSDALE, PARKER, CIRCUIT JUDGES.

BY THE COURT:

IT IS ORDERED that the motion of appellee USA for summary affirmance is granted.

IT IS FURTHER ORDERED that their additional request to suspend briefing pending court's decision is denied or moot,

IT IS FURTHER ORDERED that their alternative request for an extension of thirty (30) days to file their brief is denied or moot.